

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION**

WRIT PETITION NO.1375 OF 1991

Smt.Nirmala Shailesh Sankhe, Aged Adult,
residing at National Park, Borivli East,
Bombay 400 066. .. Petitioner

V/s

1. The Executive Magistrate, Vasai,
District Thane.
2. The Collector of Thane.
3. The Divisional Commissioner, Konkan
Bhavan, Bombay (New).
4. Head Mistress,
Ram Mohanroy English School,
Girgaum, Bombay 400 004.
5. The State of Maharashtra .. Respondents

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Mr.Nitin Jamdar for the Petitioner
Mr.A.K.Abhyankar for the Respondents.

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CORAM: DR.S.RADHAKRISHNAN, J.

DATE : 08.02.2006

JUDGMENT:

1. Heard the learned Counsel for the Petitioner and the learned Counsel for Respondent No.4. None appears for the other Respondents. The biref facts are that the Petitioner had obtained a Caste Certificate from the Executive Magistrate, Vasai on 7th May, 1981 belonging to Hindu Banjara community which was recognised as OBC at the relevant time. It appears that on the basis of that certificate, the Petitioner was appointed on 15th June, 1982 by the Respondent No.4 School as an Assistant

Teacher on full time basis. Thereafter, the Petitioner was promoted as an Assistant Headmistress on 15th January, 1987. In the meanwhile, the Petitioner was reverted to the post of Assistant Teacher by Respondent No.4 School on 3rd August, 1988 but she was continued to be an Assistant Teacher. In the meanwhile, on 30th September, 1989, the Petitioner's caste certificate was cancelled by the Executive Magistrate, Vasai rejecting the claim of the Petitioner to be belonging to the Hindu Vanjara. Petitioner therefore had moved this Court by way of Writ Petition No.4354 of 1989 and this Court by an order dated 26th October, 1989 has disposed of the said Petition observing that the caste certificate of the Petitioner should be verified by the Divisional Commissioner Konkan Division. In the meanwhile, the Petitioner succeeded before the School Tribunal and the order of reversion was set aside. The Divisional Commissioner of Konkan Division had directed the Petitioner to approach the Collector, Thane and her Appeal was transferred to the Collector, Thane for the purpose of determination of the caste certificate. Thereupon the Collector of Thane had called the Petitioner for hearing on 2.1.1991 and 4.2.1991. Thereafter, on 8.2.1991 the Collector of Thane passed an order confirming the order of the Executive Magistrate, Vasai, whereby the Petitioner's caste certificate of Hindu Banjara was cancelled. Against the order of Collector dated 8.2.1991 the Petitioner had approached the Commissioner, Konkan Bhavan, under the assumption

that the appeal from the order of the Collector lies to the Commissioner. However, after realising that the appeal does not lie before the Commissioner, the Petitioner has moved this Court and filed the present petition.

2. This Court, pending admission of the Petition, has granted interim relief, whereby the order of the Executive Magistrate, Vasai cancelling the caste certificate, and the order of the Collector of Thane confirming the order of the Executive Magistrate, Vasai, have been stayed. Ultimately, the petition was admitted. The learned Counsel for the Respondent No.4 states that in view of the interim order of this Court, the Petitioner has continued in service. The learned Counsel for the Petitioner also states that the Petitioner is still in service.

3. This Court had an occasion to consider whether the Hindu Banjara and Hindu Vanjari communities are synonymous to each other in the case of **State of Maharashtra V/s.Ganpat Pandurang Sankhe - 1991 Mh.L.J.1075**, wherein the Division Bench of this Court has observed that Vanjari and Banjara shall be treated as synonymous of each other in view of the State Government's G.Rs. and the authoritative work on the subject until the State Government takes a final decision upon a report to be made by the Tribal Research and Training Institute Pune at the request of State

Government after inviting expert opinion from the enlightened persons from Banjara and Vanjari Communities. The said judgment was challenged before the Supreme Court, and the Supreme Court by an order dated 9th March, 1992 has declined to interfere. It appears that after obtaining opinion of various experts the Government has issued G.R.dated 23rd March, 1994 clearly holding the Vanjari to be belonging to Nomadic Tribes. The said notification also clearly states that the Vanjari also to be known as Vanjar and Vanjara. Under the aforesaid facts and circumstances, the Sub-Divisional Officer, Dahanu has already issued a caste certificate to the Petitioner on 10th January, 2001 clearly mentioning therein that the Petitioner belongs to Hindu Vanjari which is recognised as Nomadic Tribes as per the aforesaid Government Resolution. Under the aforesaid facts and circumstances, Rule is made absolute in terms of prayer clause (b).

(DR.S.RADHAKRISHNAN, J.)